

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: CEVC et al.

Serial Number: 10/037,480

Filing Date: January 4, 2002

Title: METHOD FOR THE IMPROVEMENT OF
TRANSPORT ACROSS ADAPTABLE
SEMI-PERMEABLE BARRIERS

Group Art Unit: 1797

Examiner: Ana M. Fortuna

CONFIRMATION NO: 5210

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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §1.97

Sir:

An Information Disclosure Statement along with attached form PTO/SB/08 is hereby submitted. A copy of each listed publication is submitted, if required, pursuant to 37 CFR §§1.97-1.98, as indicated below.

The listed information is respectfully requested to be considered by the Examiner and be made of record in the above-identified application. The Examiner is further requested to initial and return the attached form PTO/SB/08 in accordance with MPEP §609.

The right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered are reserved.

This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, prior art or material to patentability as defined in §1.56.

- A. ☐ 37 CFR §1.97(b). This Information Disclosure Statement should be considered by the Office because:
- ☐ (1) It is being filed within 3 months of the filing date of a national application and is other than a continued prosecution application under §1.53(d);
-- OR --
 - ☐ (2) It is being filed within 3 months of entry of the national stage as set forth in §1.491 in an international application;
-- OR --
 - ☐ (3) It is being filed before the mailing of a first Office action on the merits;
-- OR --
 - ☐ (4) It is being filed before the mailing of a first Office action after the filing of a request for continued examination under §1.114.
- B. ☒ 37 CFR §1.97(c). Although this Information Disclosure Statement is being filed after the period specified in 37 CFR §1.97(b), above, it is filed before the mailing date of the earlier of (1) a final office action under §1.113, (2) a notice of allowance under §1.311, or (3) an action that otherwise closes prosecution on the merits, this Information Disclosure Statement should be considered because it is accompanied by one of:
- ☐ a statement as specified in §1.97(e) provided concurrently herewith;
-- OR --
 - ☒ a fee of \$180.00 as set forth in §1.17(p) authorized below, enclosed, or included with the payment of other papers filed together with this statement.
- C. ☐ 37 CFR §1.97(d). Although this Information Disclosure Statement is being filed after the mailing date of the earlier of (1) a final office action under §1.113 or (2) a notice of allowance under §1.311, it is being filed before payment of the issue fee and should be considered because it is accompanied by:
- i. a statement as specified in §1.97(e);
-- AND --
 - ii. a fee of \$180.00 as set forth in §1.17(p) is authorized below, enclosed, or included with the payment of other papers filed together with this Statement.
- D. ☐ 37 CFR §1.97(e). Statement.
- ☐ A statement is provided herewith to satisfy the requirement under 37 CFR §§1.97(c);
-- AND/OR --
 - ☐ A statement is provided herewith to satisfy the requirement under 37 CFR §§1.97(d);
-- AND/OR --
 - ☐ A copy of a dated communication from a foreign patent office clearly showing that the information disclosure statement is being submitted within 3 months of the filing date on the communication is provided in lieu of a statement under 37 C.F.R. § 1.97(e)(1) as provided for under MPEP 609.04(b) V.
- E. ☐ Statement Under 37 C.F.R. §1.704(d). Each item of information contained in the information disclosure statement was first cited in a communication from a foreign patent office in a counterpart application that was received by an individual designated in § 1.56(c) not more than thirty (30) days prior to the filing of this information disclosure statement. This statement is made pursuant to the

requirements of 37 C.F.R. §1.704(d) to avoid reduction of the period of adjustment of the patent term for Applicant(s) delay.

F. ☒ 37 CFR §1.98(a)(2). The content of the Information Disclosure Statement is as follows:

☐ Copies of each of the references listed on the attached Form PTO/SB/08 are enclosed herewith.

-- OR --

☒ Copies of U.S. Patent Documents (issued patents and patent publications) listed on the attached Form PTO/SB/08 are NOT enclosed.

-- AND/OR --

☒ Copies of Foreign Patent Documents and/or Non Patent Literature Documents listed on the attached Form PTO/SB/08 are enclosed in accordance with 37 CFR §1.98 (a)(2).

-- AND/OR --

☒ Copies of pending unpublished U.S. patent applications are enclosed in accordance with 37 CFR §1.98(a)(2)(iii).

G. ☐ 37 CFR §1.98(a)(3). The Information Disclosure Statement includes non-English patents and/or references.

☐ Pursuant to 37 CFR §1.98(a)(3)(i), a concise explanation of the relevance of each patent, publication or other information provided that is not in English is provided herewith.

☐ Pursuant to MPEP 609(B), an English language copy of a foreign search report is submitted herewith to satisfy the requirement for a concise explanation where non-English language information is cited in the search report.

-- OR --

☐ A concise explanation of the relevance of each patent, publication or other information provided that is not in English is as follows: _____

☐ Pursuant to 37 CFR §1.98(a)(3)(ii), a copy of a translation, or a portion thereof, of the non-English language reference(s) is provided herewith.

H. ☐ 37 CFR §1.98(d). Copies of patents, publications and pending U.S. patent applications, or other information specified in 37 C.F.R. § 1.98(a) are not provided herewith because:

☐ Pursuant to 37 CFR §1.98(d)(1) the information was previously submitted in an Information Disclosure Statement for another application under which this application claims priority for an earlier effective filing date under 35 U.S.C. 120.

Application in which the information was submitted: _____

Information Disclosure Statement(s) filed on: _____

AND

☐ The information disclosure statement submitted in the earlier application complied with paragraphs (a) through (c) of 37 CFR §1.98.

I. ☒ *Fee Authorization.* The Commissioner is hereby authorized to charge all fees or credit any overpayment associated with this communication to Deposit Account No. 23-2415 (Docket No. 35946-703.301).

J. ☒ *Other Disclosures.* The following information is respectfully requested to be considered by the Examiner and be made of record in the above-identified application.

i. *European Oppositions*

European Patent No. 0 475 160 B1, the EP equivalent of U.S. Patent No. 6,165,500, assigned to IDEA AG, assignee of the present application, was the subject of an EP Opposition Proceeding filed in 1996. A decision was rendered by the EPO Opposition Division upholding EP 0 475 160 B1 in its entirety in 1998. The foregoing decision was Appealed in 1998. In 2004, a decision was reached in the Appeal which maintained the Patent in an amended form. The Amended Patent was published as European Patent No. 0 475 160 B2.

European Patent No. 0 935 457 B1, the EP equivalent of U.S. Application No. 09/284,683, assigned to IDEA AG, assignee of the present application, was the subject of an EP Opposition Proceeding filed in 2004. A decision was rendered by the EPO Opposition Division revoking EP 0 935 457 B1 in its entirety in 2007. The foregoing decision was Appealed in 2007 and is currently pending.

European Patent No. 1 140 021 B1, the EP equivalent of U.S. Patent No. 7,175,850, assigned to IDEA AG, assignee of the present application, was the subject of an EP Opposition Proceeding filed in 2005. A decision was rendered by the EPO Opposition Division upholding EP 1 140 021 B1 in an amended form in 2007. The foregoing decision was Appealed in 2007 and is currently pending.

If the Office requires additional information regarding any of the above-referenced Opposition Proceedings or Appeals, the Examiner's attention is invited to the European Patent Office RegisterPlus Database [<http://www.epoline.org/portal/public/registerplus>]. Alternatively, the Undersigned will respectfully endeavor to provide further information upon the Examiner's request.

ii. *German Proceedings*

German Patent No. DE 4447287 C1, a German equivalent of U.S. Application No. 09/284,683, assigned to IDEA AG, assignee of the present application, was subject to a German Opposition Proceeding in 1997. The German Patent was revoked by the patent office in 2004 not appealed.

German Patent No. DE 59107402 D, a German equivalent of U.S. Patent No. 6,165,500, assigned to IDEA AG, assignee of the present application, is the subject of a German Revocation Proceeding filed in 2007 before the Federal Patent Court. The foregoing German Revocation Proceeding is currently pending.

If the Office requires additional information regarding the Opposition or Revocation Proceeding, the Examiner's attention is invited to the German Patent Office DPINFO Database [https://dpinfo.dpma.de/index_e.html]. Alternatively, the Undersigned will respectfully endeavor to provide further information upon the Examiner's request.

iii. *Italian Litigation*

The Italian equivalent of U.S. Patent No. 6,165,500, is currently the subject of a Litigation Proceeding in Italy. No additional documentation is provided at this time. However, if the Office requires additional information regarding the Litigation Proceeding, the Undersigned will respectfully endeavor to provide further information as may be reasonably available upon the Examiner's request.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI

Dated: December 21, 2007

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